

REMARKS

The following remarks, taken together with the claim amendments listed herein, are provided in response to the Office Action communication dated June 27, 2008, wherein the shortened period for response expires on September 29, 2008. Accordingly, this response is timely filed.

Upon receipt of the present Office Action, Applicants' claims 1-18 were pending in the subject application. Claims 1, 3-5, 7-9, 11-13 and 15-18 currently stand rejected under the provisions of 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 7,243,083 (hereinafter "Burns") in view of U.S. Patent 5,787,402 (hereinafter "Potter") and U.S. Patent 6,852,683 (hereinafter "Gerhard"). Claims 2, 6, 10 and 14 currently stand rejected under the provisions of 35 U.S.C. §103(a) as being unpatentable over Burns in view of Potter, and further in view of U.S. Patent 7,171,386 (hereinafter "Raykhman").

In view of the foregoing rejections, Applicants submit the following remarks wherein the Examiner's rejections are respectfully traversed.

Rejection of Claims under 35 U.S.C. § 103(a)

In rejecting original claims 1, 5, 9 and 13, the Examiner asserts that all of the limitations recited in these independent claims are shown by the combined teachings of Burns, Potter and Gerhard. *Office Action, Page 2.*

Pursuant to MPEP § 2142, to establish a *prima facie* case of obviousness, and thus sustain the rejection of a claim under 35 U.S.C. § 103(a), there must be a clear articulation of the reasons why Applicants' claimed invention would have been obvious. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ____ (2007). The Supreme Court in *KSR* has further noted that an analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit. Therefore, it is clear that an obviousness rejection "cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006). Moreover, "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must

present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” MPEP § 706.02(j).

Applicants kindly direct the Examiner’s attention to the following limitation recited in said independent claim 1 (independent claims 5, 9 and 13 present a similar corresponding limitation):

“determine whether the market data falls within certain spread parameters and, if the market data falls within the certain spread parameters: initiate a first order in a first market for a first security of the spread in a foreign currency; initiate a second order in a second market for a second security of the spread, whereby the second order is at a selected ratio as compared to the first order to reduce the risk of adverse price movements in the first security” (emphasis added).

On page 3 of the present Office Action, the Examiner directs Applicants to the following sections of Gerhard that allegedly teach the foregoing limitation: (i) column 1, lines 25-43; (ii) column 3, lines 1-25; (iii) column 4, lines 1-6 and 35-48; and (iv) column 6, lines 2-29. Applicants have carefully considered the teachings of Gerhard in its entirety, particularly the aforementioned cited sections, and submit that Gerhard does not teach or suggest any aspect of the foregoing limitation, which clearly provides for at least two separate orders corresponding to two separate securities to be initiated in two separate markets.

Provided in section (i) of Gerhard is a discussion of existing techniques for protecting against fluctuation of foreign exchange (FX) risks through the purchase of FX options for the currency an investor wishes to receive upon selling a foreign security. Provided in section (ii) of Gerhard is a discussion of calculating the cost of hedging against a currency risk based on the appreciation value of a security, broadly describing a method encompassing receiving a request for hedging, performing a calculation for hedging against the currency risk based on various currency criteria and providing an investor with the proceeds from the sale of a security when certain exchange rate criteria are met. Provided in section (iii) of Gerhard, specifically lines 1-6, is a discussion of providing a system in communication with an exchange through which an investor’s transaction in a particular security can be executed and wherein that same system is also coupled to a foreign exchange data source for receiving real-time foreign exchange data. Provided in section (iii) of Gerhard, specifically lines 35-48, is a discussion of what is queried

and received by a hedge pricing engine in response to a request for hedging a particular securities transaction, for a specified time period, against a currency risk associated with the fluctuation of an exchange rate. Provided in section (iv) of Gerhard is a discussion of the steps employed by the system when it receives a request to purchase a security, the primary determinations including whether the investor has made a request to hedge the order to protect against currency fluctuations and whether the order placed is a limit order.

Contrary to the Examiner's assertion, Applicants respectfully submit that the elements set forth in the aforementioned claim limitation are neither shown nor suggested by cited sections (i), (ii), (iii) or (iv) of Gerhard, whether they are considered independently or in combination with the teachings of Burns and Potter. In fact, Applicants can not ascertain the correlation between the claimed limitation and these particular sections of Gerhard that have been cited. Nowhere in these sections of Gerhard is there a disclosure of employing a pairs trading strategy as described in Applicants claimed invention, which requires that at least two different, but correlated, securities (e.g., securities of competitors in the same sector) be initiated, in at least two separate markets, upon satisfaction of certain predefined spread criteria. Gerhard simply does not disclose trading a spread of multiple securities across separate markets. The teachings of Gerhard, particularly those sections identified by the Examiner, are directed primarily at hedging against unfavorable exchange rates for a single security investment made in a non-domestic currency, and does not deploy or suggest any pairs trading strategy that provides for long and short positions to be executed on two related securities for purposes of hedging risk.

Applicants respectfully submit that the selected teachings of Gerhard have no bearing on Applicants' claimed invention and, as such, fail to correct the deficiencies in the teachings of Burns and Potter, both of which have been acknowledged by the Examiner on page 3 of the Office Action as lacking in teaching the foregoing claim limitation. Absent a showing or suggestion in the alleged prior art references that at least two orders are initiated in two separate markets for two related securities having some type of correlation with respect to their price movement, as claimed, Applicants respectfully submit that the requirement to provide an articulated reasoning with a rational underpinning to support the legal conclusion of obviousness is not satisfied.

In view of the foregoing remarks, independent claim 1, claims 2-4 which depend therefrom, independent claim 5, claims 6-8 which depend therefrom, independent claim 9, claims 10-12 which depend therefrom, and independent claim 13, claim 14-16 which depend therefrom, are patentable over the teachings of Burns, Potter and Gerhard, whether taken independently or in combination. Accordingly, Applicants respectfully request that the rejection of these claims under the provisions of 35 U.S.C. § 103(a) be withdrawn.

Conclusion

For at least the reasons set forth above, this patent application, as amended, is now in condition for allowance. Reconsideration and prompt allowance of this patent application are respectfully requested.

If it will advance the prosecution of this patent application, the Examiner is urged to telephone (973.597.6326) Applicants' undersigned representative. All written communications should continue to be sent to the address provided below.

Respectfully submitted,

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